

Appl. No. : 09/815,242
Filed : March 21, 2001

REMARKS

Claims 48 and 88 have been amended to broaden their scope. Additionally, new claims 101 and 102 have been added. Claims 101 and 102 are dependent on claim 48 and 88, respectively. Support for claims 48 and 88 can be found in the specification on pages 46-48 and on page 94, lines 5-19. Support for new claims 101 and 102 can be found on pages 46-49 and throughout the application. Accordingly, no new matter has been added to this application.

SEQUENCE ELECTION REQUIREMENT

Applicants respectfully request that the Examiner reconsider the arguments contained in their Office Action response, which was filed on February 27, 2003 and which is incorporated herein by reference in its entirety, and expressly reserve the right to file a petition which argues that the sequences related to *yphC* nucleic acids and YphC polypeptides should be examined in a single patent application.

Although Applicants maintain that each of the sequences related to *yphC* nucleic acids and YphC polypeptides can be examined together without placing an undue burden on the Examiner, Applicants would like to place special emphasis on the structural relationship between each of the antisense nucleic acids which are complementary to at least a portion of the nucleic acid encoding YphC from *Staphylococcus aureus*. In particular, Applicants have discovered six antisense nucleic acids, each of which alone possesses the ability to inhibit the proliferation of *Staphylococcus aureus*. Each of these antisense nucleic acids coincide with at least a portion of the full-length YphC antisense sequence. Additionally, while each sequence is patentably distinct, at least four of these antisense nucleic acids (SEQ ID NOs: 1463, 1845, 2782, and 3283) contain regions of substantial overlap with each other. For example, about 91% of SEQ ID NO: 1845 is contained within SEQ ID NO: 3283. In addition, over 79% of SEQ ID NO: 3283 is contained within SEQ ID NO: 1463. Similarly, nearly 79% of SEQ ID NO: 2782 is contained within SEQ ID NO: 1463. Accordingly, each of the above-identified antisense sequences share substantial sequence identity.

SPECIES ELECTION REQUIREMENT

Applicants also traverse the Examiner's new election of species requirement for claims 48, 50, 88 and 90. According to 37 C.F.R. § 1.146, Applicants are entitled to examination of

Appl. No. : 09/815,242
Filed : March 21, 2001

species that fall within the scope of an allowed generic linking claim. As such, Applicants have amended claims 48 and 88 so as to replace the organisms recited therein with the broader term "a pathogenic microorganism," which encompasses all of the species originally recited in these claims. New claims 101 and 102, which depend from currently amended claims 48 and 88, respectively, have also been added. Each of these newly added claims recite each of the organisms listed in claims 48 and 88 prior to the current amendment. Accordingly, the organisms recited in claims 101 and 102 fall within the scope of the generic linking claims 48 and 88. Additionally, claims 49 and 89, which recite "wherein said sensitized cell is a Gram positive bacterium," provide linking claims which encompass the species listed in claims 50 and 90, respectively. If the generic linking claims 48 (amended), 49, 88 (amended) and 89 are found to be allowable, no restriction of species should be required for claims dependent thereon (claims 101, 50, 102 and 90, respectively). Accordingly, Applicants request that upon a finding that the linking claims are allowable, the Examiner withdraw her election of species requirement.

CONCLUSION


As indicated above and in their previous response of February 27, 2003, Applicants maintain that the claimed *yphC* nucleic acids and YphC polypeptides share sufficient structural and biological relationship to permit examination of each of these claimed sequences in a single application.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: June 27, 2003

By: 
Jerry L. Heffner
Registration No. 53,009
Attorney of Record
Customer No. 20,995
(619) 235-8550

S:\DOCS\VLH\VLH-2059.DOC:062303